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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,943	06/25/2001	William A. Mittelstadt	56842USA4A.002	9282

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EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on July 31st, 2006 have been fully considered but they are not persuasive. The applicant argues that Japuntich does not teach valve flaps with a side profile having a curvature when the valve flap is not attached to a valve body or face mask, wherein the curvature, or a portion of the curvature, or a portion of the curvature, is at least partially flattened when the valve flap seals the opening. The examiner disagrees. The Japuntich reference does disclose a flexible flap preferably assumes a flat configuration. The keyword being preferably meaning the valve flap taught by Japuntich can have a valve flap with a side profile having a curvature when the valve flap is not installed to a valve body or face mask, wherein the curvature, or portion of the curvature, or a portion of the curvature, is at least partially flattened when the valve flap seals the opening and does not have to assume a flat configuration.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim **28-35 and 39-45** are rejected under 35 U.S.C. 102(b) as being anticipated by Japuntich et al. (US 5,509,436).

4. **As to claim 28**, Japuntich discloses a unidirectional fluid valve that comprises a face mask (10) having at least opening for receiving a unidirectional valve; and a unidirectional valve that comprises a valve body comprising a valve opening 52; and a valve flap having a first

portion attached to the valve body and an adjacent second portion that seals the valve opening, wherein the valve flap has a curvature from the first end to the second end when the valve flap is not attached to the valve body, and further wherein at least a portion of the curvature of the valve flap is at least partially flattened when the valve flap seals the valve opening.

5. **As to claim 29**, Japuntich discloses an apparatus wherein the valve opening is generally planar, and wherein the valve flap curvature biases the valve flap toward the valve opening when the valve flap is attached to the valve body to seal the valve opening (Refer to figures 3 and 4 and column 6 lines 33 through 67).

6. **As to claim 30**, Japuntich discloses an apparatus wherein the valve flap curvature biases the valve flap towards the valve opening to seal the valve opening, and wherein the bias of the valve flap toward the valve opening is sufficient to seal between the valve opening in any orientation of the unidirectional valve (see figures 3 and 4).

7. **As to claim 31**, Japuntich discloses an apparatus wherein the curvature in the valve flap comprises a constant curvature from the first end to the second end (see figures 3 and 4). Referring to claim 32, Japuntich discloses an apparatus wherein the curvature in the valve flap varies from the first end to the second end (see figures 3 and 4).

8. **As to claim 32**, Japuntich discloses an apparatus wherein the curvature in the valve flap varies from the first end to the second end (see figures 3 and 4).

9. **As to claim 33**, Japuntich discloses an apparatus wherein the facemask is formed of a filtering material (see column 5 lines 10-15).

10. **As to claims 34 and 35**, Japuntich discloses an apparatus wherein the unidirectional valve is an exhalation/inhalation valve (see column 11 lines 10 through 15).

11. **As to claim 38**, Japuntich discloses an apparatus that comprises a face mask 10 comprising an opening formed therethrough; and a unidirectional valve located over the opening in the face mask, the unidirectional valve comprising a valve flap 24 attached to the face mask over the opening, the valve flap 24 comprising a curvature from a first end to a second end when the valve flap is not attached to the face mask, wherein the curvature of the valve flap is at least partially flattened when the valve flap seals the opening in the face mask.

12. **As to claim 39**, Japuntich discloses an apparatus wherein the at least partially flattened curvature of the valve flap creates a bias that is substantial enough to keep the valve flap sealed over the opening in all orientations (see figures 3 and 4).

13. **As to claim 40**, Japuntich discloses an apparatus wherein the curvature of the valve flap comprises a constant curvature (see figures 3 and 4).

14. **As to claim 41**, Japuntich discloses an apparatus wherein the curvature of the valve flap varies from the first end to the second end (see figure 3 and 4).

15. **As to claim 42**, Japuntich discloses an apparatus wherein the opening is generally planar such that the curvature of the valve flap attached to the face mask over the opening is flattened when the valve flap seals the opening in the face mask (see figure 3 and 4).

16. **As to claim 43**, Japuntich discloses an apparatus wherein the facemask is formed of a filtering material (see column 5 lines 10-15).

17. **As to claims 44 and 45**, Japuntich discloses an apparatus wherein the unidirectional valve is an exhalation/inhalation valve (see column 11 lines 10 through 15).

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims **15-18, 28, 38 and 48-50** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **13-16 and 26** of U.S. Patent No. 6,883,518. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 15, 28 and 38 of the current application and claims 13 and 26 of the patent ‘518 lies in the fact that the patent claims 13 and 26 includes many more elements and is thus much more specific. Thus the invention of claims 13 and 26 is in effect a “species” of the “generic” invention of claims 15, 28 and 38 of the current application. It has been held that the generic invention is “anticipated” by the “species”. See *In re Goodman*, 29 USPQ2d 2010 (fed. Cir. 1993). Since claims 15, 28 and 38 of the current application is anticipated by claims 13 and 26 of patent ‘518, it is not patentably distinct from claims 13 and 26 of patent ‘518. **Claim 16 of the current application**, the limitations can be found in claim 14 of patent ‘518. **Claim 17 of the current application**, the limitations can be found in claim 15 of patent ‘518. **Claim 18 of the current application**, the limitations can be found in claim 16 of

patent '518. **Claim 48 of the current application**, the limitations can be found in claim 26 of patent '518. **Claim 49 of the current application**, the limitations can be found in claim 26 of patent '518. **Claim 50 of the current application**, the limitations can be found in claim 26 of patent '518.

20. Claims **15, 17-20 and 23-27** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **1, 2, 4-10, 12 and 18** of U.S. Patent No. 6,883,518 in view of Braun (US 4,934,362). As to **claim 15 of the current application**, claim 1 of patent '518 discloses all the limitations of claim 15 of the current application with the exception of providing a face mask having at least one opening for receiving a unidirectional valve. Braun discloses a unidirectional fluid valve that does provide a face mask having at least one opening for receiving a unidirectional valve, using unidirectional valve on a face mask is well known in the art as taught by Braun. Therefore it would have been obvious to use the face mask of Braun on the unidirectional valve of patent '518 or vice versa. **Claim 17 of the current application**, the limitations can be found in claim 10 of patent '518. **Claim 18 of the current application**, the limitations can be found in claim 8 of patent '518. **Claim 19 of the current application**, the limitations can be found in claim 4 of patent '518. **Claim 26 of the current application**, the limitations can be found in claim 9 of patent '518. **Claim 27 of the current application**, the limitations can be found in claim 12 of patent '518. **Claim 24 of the current application**, the limitations can be found in claim 6 of patent '518. **Claim 23 of the current application**, the limitations can be found in claim 5 of patent '518. **Claim 20 of the current application**, the limitations can be found in claim 2 of patent '518. **Claim 25 of the current application**, the limitations can be found in claim 7 of patent '518.

Allowable Subject Matter

21. Claims **21, 22, 36, 37, 46 and 47** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

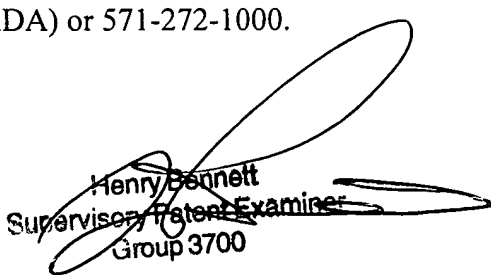
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nihir Patel
Art Unit 3743


Henry Bennett
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